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No. 82-647

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

DONALD J. KIRKPATRICK,

Petitioner,

—v.—

CHRISTIAN HOMES OF ABILENE, INC., and the 326th DISTRICT COURT OF TAYLOR COUNTY, TEXAS,

Respondents.

REPLY MEMORANDUM IN SUPPORT OF PETITION FOR CERTIORARI

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1. Respondent's Brief in Opposition to Petition for Certiorari rests on a single, entirely mistaken premise: that Texas law can ignore the basic biological relationship between petitioner and his daughter by refusing to grant him the legal status of "parent," and then define his rights to their relationship in terms of

the lesser status Texas has chosen to accord him. The Court, however, has already soundly rejected precisely this line of reasoning in another parental termination case:

> To say that the test of equal protection should be the 'legal' rather than the biological relationship is to avoid the issue. For the Equal Protection Clause necessarily limits the authority of a state to draw such 'legal' lines as it chooses.

Stanley v. Illinois, 405 U.S. 645, 652 (1972) (citation omitted). The reason for respondent's effort to "avoid the issue" in this matter by insisting that this is a legitimation, rather than a termination, proceeding is readily apparent: a termination proceeding requiring a "parent" to shoulder the burden of proof, or to face termination of parental rights on the basis of a vague "best

interests of the child" standard,*/ would plainly offend the Constitution, Santosky v. Kramer, ___ U.S. ___, 102 S.Ct. 1338, 71 L.Ed.2d 599 (1982).

2. Respondent also attempts to cloud the clearly presented legal questions raised by this case with selective and misleading "statements of fact."

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*/ Respondent's assertion that the due process issues were not sufficiently raised below is mistaken. In the Texas Court of Civil Appeals, petitioner explicitly attacked the differential standard applied to out-of-wedlock fathers on grounds of equal protection and argued that the "best interest of the child" standard violated due process. Brief for Appellant, Texas Court of Civil Appeals, at 14-20. His application for a Writ of Error to the Texas Supreme Court, which was denied, explicitly assigned as error that the provision at issue here "is unconstitutional in that it violates the Equal Protection and Due Process clause of the Fourteenth Amendment to the United States Constitution." Application for a Writ of Error at 4.

Despite respondent's insinuations to the contrary, however, a careful reading of the record below will reveal that any ambivalence petitioner may ever have experienced concerning the future of his daughter vanished promptly upon her birth. Since the time of her birth, he has been steadfast in his desire to support and to raise her in his family's home, despite the fact that the maternal grandparents have impeded his ability to develop a personal relationship with her by sending the baby's mother to another jurisdiction a thousand miles away. As the record shows, petitioner not only hired an out-of-state lawyer to represent him, but, together with his parents, travelled from Nebraska to Texas to corroborate at trial the court-appointed social worker's report that he could provide his daughter with an adequate and caring home.

In view of petitioner's consistent demonstration of a desire to care for his daughter from the moment she was born, and the acknowledgement by all concerned that he is indeed her father, it is hardly surprising that respondents have felt compelled to resort, in their Brief in Opposition, to the circular reasoning already rejected by the Court in Stanley v. Illinois, supra. There is, however, no more reason for the Court to countenance those arguments in this case than there was in Stanley.

The Constitution precludes the state from permanently severing the bond between a child and a loving and willing biological parent in the absence of a specific showing of parental unfitness. It also precludes the state from imposing a different substantive standard on out-of-wedlock fathers from that imposed on all other parents. The Court

should grant certiorari because this case presents an appropriate occasion to establish those fundamental principles.

Respecfully submitted,

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